



Northwest Justice Project

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César E. Torres
Executive Director

April 19, 2010

Mr. Ronald Carpenter Clerk
Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0920

Attn: Camilla Faulk

Re: Proposed Amendment to CR 43

Dear Mr. Carpenter:

I am writing on behalf of the Northwest Justice Project (NJP), a statewide provider of free civil legal aid to low-income persons. NJP has 17 offices throughout the state, as well as a statewide toll-free telephonic system that screens applicants for legal assistance and provides direct limited legal assistance, advice, education and referrals for representation and other services to eligible low-income persons. The proposed amendment to Civil Rule 43, which provides for the taking of testimony in judicial proceedings through contemporaneous transmission from a different location in compelling circumstances and for good cause shown, will provide a significant benefit for persons who experience geographic and other barriers to effective participation in the judicial process.

There is any number of situations in which it is problematic for litigants or witnesses to appear at a court location to give needed testimony. Advances in technology now permit effective interaction between courts, counsel and witnesses such that both direct and cross-examination can occur and the credibility of witnesses can be adequately judged. This is especially true in non-jury cases and the court is well-equipped with technology needed to undertake the transmission. We can provide ready examples of real cases in which the ability to provide remote testimony would have made the courts more accessible to the litigants and provided the trier of fact with sufficient information to render a decision.

- A case in which a victim of domestic violence had fled the home and was, for her own protection, living a substantial distance from the area in which the action was pending. At great risk to herself, she travelled long distances for several court hearings. The ability to provide testimony from a remote location would have both promoted her safety and provided greater flexibility in scheduling hearings.



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- A client with a disability was forced to travel from a remote area in eastern Washington to Montesano for hearings. On several occasions the client literally could not get to court due to snow. The long car rides also exacerbated the disability and increased pain requiring significant medication after each trip. The ability to provide testimony through video conferencing or other technology from an NJP field office in the client's community would have accommodated the disability and mitigated the scheduling issues.

Other examples related to domestic violence, child care issues, travel costs, work schedules, etc. abound. NJP's CLEAR system, which already assists eligible persons remotely by telephone and other electronic communication, could potentially provide greater capacity for representation of low income persons in hearings by allowing both counsel and litigant to appear remotely through videoconferencing or other technology.

The proposed change in CR 43 strikes an appropriate balance by limiting the taking of testimony remotely to "compelling circumstances" and for "good cause." Realizing that in person testimony is the preferred method in highly contested proceeding or jury case, these standards both protect the integrity of judicial process and the rights of litigants to confront witnesses. At the same time, it allows for greater judicial efficiency by providing flexibility in scheduling hearings and reducing witness costs. We urge adoption of the proposed amendment to CR 43.

Sincerely,



Deborah Perluss
Director of Advocacy/General Counsel
Northwest Justice Project

C César E. Torres. Exec. Dir.